FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 29 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 479

GRAND TRUNK WESTERN RAILROAD COMPANY,
Petitioner,

vs.

LEWIS W. JAMES, ADMINISTRATOR OF THE ESTATE OF COLIN KAHL, DECEASED,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

GEORGE B. CHRISTENSEN,
GERARD E. GRASHORN,
EDWARD J. WENDROW,
38 South Dearborn Street,
Chicago 3, Illinois,
Counsel for Petitioner.

WINSTON, STRAWN, SMITH & PATTERSON,
38 South Dearborn Street,
Chicago 3, Illinois,

FORBES B. HENDERSON,
EARL C. OPPERTHAUSER,
131 West Lafayette Blvd.,
Detroit, Michigan,
Of Counsel.

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

	PAGE
Opinions below	1
Jurisdiction	2
Question presented	3
Constitutional Provisions and Statute involved	4
Statement	4
Reasons for granting the writ	7
Conclusion	17
Appendix A—Opinion of Ill. Appellate Court	19
B—Opinion of Supreme Court of Ill.	25

CITATIONS.

Cases.

Carpenter v. Strange, 141 U. S. 87, 106	16
Chambers v. B. & O. R. Co., 207 U. S. 142	10
Cole v. Cunningham, 133 U. S. 107, 118	9, 10, 15
Douglas v. N. Y., N. H. & H. R. Co., 279 U. S. 377	11
Fall v. Eastin, 215 U. S. 1	10
Hampton v. McConnell, 3 Wheat. 234, 235	9, 14
Hood v. McGehee, 237 U. S. 611	10
Huntington v. Attrill, 146 U. S. 657, 666, 683-86	16
Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 439	12
Miles v. Illinois Cent. R. Co., 315 U. S. 698, 720	9
Milliken v. Meyer, 311 U. S. 457, 462	12
Missouri ex rel. Southern R. Co. v. Mayfield, 340 U. S. 1	11

Olmsted v. Olmsted, 216 U. S. 386 10
People v. Halvey, 330 U. S. 610, 616 12
Pere Marquette Ry. Co. v. Stutz, 268 Mich. 388, 256 N. W. 458 6
Pope v. Atlantic Coast Line R. Co., 345 U. S. 379 3
Princess Lida v. Thompson, 305 U. S. 456 8
Riley v. New York Trust Co., 315 U. S. 343, 348 12
Royal League v. Kavanagh, 233 Ill. 175, 183 15
State v. District Court, 126 Minn. 501, 148 N. W. 463 .. 10
State v. District Court, 140 Minn. 494, 168 N. W. 589 .. 10
Steelman v. All Continent Co., 301 U. S. 278, 291 15
Whitfield v. Ohio, 297 U. S. 431, 436 2
Whitney v. California, 274 U. S. 357, 360, 361 2
Williams v. North Carolina, 317 U. S. 287, 294 9

Statutes.

28 U. S. C. § 1257(3), § 1738 2
Article IV, §1, Constitution of the U. S. 4
XIV Amendment, Constitution of the U. S. 4
Article III, § 2, Constitution of the U. S. 16

Miscellaneous.

28 Am. Jur., p. 381 15
High on Injunctions (4th Ed.), Vol. 1, p. 117 15
Lewis & Spelling, Injunctions, § 37 15
2 Story's Equity Jurisprudence (14th Ed.), § 1195 ... 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. .....

GRAND TRUNK WESTERN RAILROAD COMPANY,
Petitioner;

vs.

LEWIS W. JAMES, ADMINISTRATOR OF THE ESTATE OF COLIN KAHL, DECEASED,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable, The Chief Justice of the United States, and the Honorable Associate Justices of the Supreme Court of the United States.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above entitled case on September 18, 1958.

OPINIONS BELOW.

The opinion of the Appellate Court of Illinois, printed as Appendix A hereto, is reported in 13 Ill. App. 2d 542, 142 N. E. 2d 804. The opinion of the Supreme Court of

Illinois, reversing the judgment of the Appellate Court in a 4-3 decision, is reported in 14 Ill. 2d 356, 152 N. E. 2d 858. It is printed as Appendix B hereto.

JURISDICTION.

The judgment of the Supreme Court of Illinois was entered on September 18, 1958. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3).

Petitioner railroad obtained an injunction in the Circuit Court of Cass County, Michigan, enjoining prosecution of a wrongful death action by the decedent's administrator against petitioner in the Superior Court of Cook County, Illinois. The death action arose out of a grade crossing collision in Cass County, Michigan and the defendant and the administrator were citizens of Michigan. The administrator then filed a complaint for a counterinjunction against enforcement of the Michigan injunction in the Superior Court of Cook County. On petitioner's oral motion such counterinjunction was denied and the complaint dismissed. The Appellate Court of Illinois affirmed this action. Leave to appeal was then granted the administrator by the Supreme Court of Illinois. In the Supreme Court petitioner, as appellee, contended that to coerce it by a counterinjunction to give up its rights in orders enjoining the administrator from prosecuting the wrongful death action in Illinois would violate the full faith and credit and due process clauses of the United States Constitution (R. 102). The Supreme Court of Illinois considered and disposed of the Federal questions presented adversely to petitioner and this Court plainly has jurisdiction to consider them. *Whitfield* v. *Ohio*, 297 U. S. 431, 436; *Whitney* v. *California*, 274 U. S. 357, 360, 361.

The Supreme Court of Illinois held it to be error to dismiss the administrator's complaint and motion for injunction and reversed the Superior Court of Cook County and the judgment of the Appellate Court affirming it and remanded the cause with directions to proceed with the views expressed in its opinion (R. 189). The opinion stated that respondent was entitled to an Illinois injunction against two Michigan injunctions restraining the prosecution of the wrongful death action in Illinois. Although under Illinois law petitioner theoretically would have a right to file an answer to the complaint and interpose some other defense, it has no other defense and the trial court, under the opinion of the Supreme Court of Illinois, would have no alternative but to issue a counterinjunction. Under *Pope* v. *Atlantic Coast Line R. Co.*, 345 U. S. 379, the judgment of the Illinois Supreme Court is final for purposes of review by this Court. In that case the railroad sought to restrain defendant from prosecuting an F. E. L. A. action in another state. A demurrer to the petition, sustained by the trial court, was reversed by the Supreme Court of Georgia. This Court held that, although under Georgia law the railroad theoretically could interpose some other defense in the trial court, since it had no other defense the order of the Georgia Supreme Court was final. This Court pointed out that there was nothing more to be decided. Exactly the same situation exists here.

QUESTION PRESENTED.

Where a party has obtained final injunctions against a citizen of a state enjoining the prosecution of a transitory cause of action in a foreign state, does a counterinjunction by the court of the foreign state, enjoining the enforcement of said injunctions, violate the full faith and credit and due process clauses of the Federal Constitution?

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED.

The constitutional provisions involved are:

§ 1 of Article IV, which provides:

> "Full Faith and credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may, by General Laws, prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The XIV Amendment, which provides in part:

> "nor shall any State deprive any person of life, liberty, or property, without due process of law."

The statute involved is 28 U. S. C. § 1738, which provides in part:

> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT.

This proceeding involves the claim of supremacy, in the exercise of its injunctive power, by the Supreme Court of Illinois over the courts of Michigan. It specifically involves a case where the Illinois Supreme Court has taken the position that the courts of the State of Michigan have no power to enjoin a proceeding in the courts of Illinois and, at the same time, has declared that it has the power to enjoin such injunctive proceedings in Michigan. This claim of power is all the more startling in view of the fact that the Michigan injunctions were directed against a Michigan citizen, and an officer of its courts, in favor of a Michigan

corporation arising out of a cause of action for damages under the Michigan Wrongful Death Statute on account of a Michigan accident. The unprecedented claim of power asserted by the majority of the Illinois Supreme Court has been made against the following factual background:

Respondent's predecessor* commenced an action in the Superior Court of Cook County under the Michigan Wrongful Death Act alleging that decedent came to his death from the negligence of defendant in a grade crossing collision (R. 20-1). Later, petitioner filed a chancery bill in the Circuit Court of Cass County, Michigan, to enjoin the administrator from prosecuting the death action. The complaint invoked traditional equity grounds for enjoining litigation in another jurisdiction, namely, the cost, trouble and expense of bringing witnesses to Illinois, the impossibility of using compulsory process to secure their attendance, and other facts showing added expense and inconvenience which would result from trying the action in Illinois. It also pleaded a Michigan venue statute which requires that an action against a railroad be brought in the county of plaintiff's residence if the line of road traverses the county (R. 20-27-32). Petitioner's prayer for a temporary injunction was granted (R. 20-32). The administrator then filed a complaint in the Superior Court of Cook County seeking a counterinjunction against the Michigan injunction. While the appeal was pending a permanent injunction was entered by the Michigan court against the administrator (R. 33).** Subsequently peti-

* The original administrator of the estate of Colin Kahl, deceased, was Lois Kahl (who has since remarried and is now Lois Kahl Sefcik). She has in turn been succeeded by Adam Greenawalt and Lewis W. James, present administrator. Except where specifically noted, we shall make no distinction in this petition between these administrators.

** The majority opinion states that plaintiff did not appeal from the Michigan injunction when it was learned that an appeal bond would not have the effect of staying the proceedings. The real

tioner instituted another action in the Michigan court, again requesting an injunction against further prosecution of the Michigan action and an order requiring the administrator to dismiss it.** A decree was later entered in accordance with the prayer of the complaint (R. 36).

Upon review of the Illinois action the Appellate Court affirmed the dismissal of the complaint, saying that it would not engage in a "preposterous duel of injunctions with the Michigan court" (App. 23).

Thereafter the Supreme Court granted leave to appeal, and while the action was there pending the original administrator was removed by the Probate Court of Cass County*

---

reason why the administrator did not appeal was that such an appeal would have been hopeless because the Supreme Court of Michigan, in *Pere Marquette Ry. Co.* v. *Slutz*, 268 Mich. 388, 256 N. W. 458, had upheld the issuance of an injunction under identical circumstances. Moreover, under Rule 62, § 2, petitioner could have applied for a stay from a justice of the Supreme Court. What the administrator really did was to abandon any attempt to secure review in the Michigan Supreme Court and in effect seek, and obtain, a review of the Michigan injunctions by the Illinois Supreme Court.

** The majority opinion states that in the instant case the Michigan injunction was apparently issued pursuant to the policy of the state embodied in its venue statute (App. 34). The first complaint invoked both equity principles and the statute. The record does not reveal on what ground the injunction was granted. Neither does the record reveal on what ground the second injunction was granted or on what ground it was sought.

* The majority opinion says that it would not remain "oblivious of defendant's coercive tactics of having plaintiff removed as administratrix of her husband's estate as punishment for proceeding with her Illinois action, and superseded by an administrator who was not only friendly to defendant, but who selected counsel to prosecute the estate's claim against defendant, subject to defendant's approval and direction" (App. 39). *These statements are absolutely incorrect.* The original administrator was removed by the Probate Court of Cass County for failing "to render an accounting as required by the Order of this Court" (R. 169)—a reason having no relation to these proceedings. It is true that the attorney who had represented petitioner in Cassopolis, Michigan, had filed a petition for her removal, but he did this solely as an "officer of this Court" (R. 15)—contrary to the

and Mr. Greenawalt and Mr. James, in turn, succeeded her. Upon further review, the Illinois Supreme Court by a 4-3 vote reversed the lower court's opinion holding that, notwithstanding the full faith and credit and due process clauses of the Federal Constitution, the administrator was entitled to a counterinjunction against the Michigan injunctions.

REASONS FOR GRANTING THE WRIT.

Rule 19 of this Court provides that one of the reasons for granting certiorari is "where a state court has decided a Federal question of substance not theretofore determined by this Court:". This case meets the requirements of this rule as fully as any case can ever meet it. The Federal questions presented are not only novel and substantial, but arise under circumstances which make it imperative that this Court intervene: The Illinois Supreme Court has fired the first shot in what promises to be, in the words of the Appellate Court, "a preposterous duel of injunctions between the courts of Michigan and Illinois." When the judiciary of two different states, through private litigants,

express request of petitioner's General Attorney. (See affidavit of General Attorney of petitioner at R. 166.) Counsel filed an affidavit stating that he was prosecuting attorney in the county (R. 170) and the reason he filed a removal petition as officer of the Court was because "The continued defiance of local court orders, both Circuit and Probate, by this woman has caused common gossip and brings our courts into disrepute in such a small community." (R. 172.) The administrator has obtained a permanent license from the Illinois Supreme Court to continue this defiance in Michigan.

Petitioner did not select counsel to bring the Michigan action against it. The affidavit of the successor administrator states that he selected the counsel and merely called petitioner's local counsel and asked him to have counsel whom he had selected get in touch with him (R. 138). This was done to save an out-of-town toll call (R. 143). Counsel chosen filed an affidavit stating that he "denies he has ever had any arrangement or understanding with Attorney Jerry J. O'Connor regarding this law suit and that same was instituted in good faith." (R. 142.)

start engaging in open conflict, the only way that conflict can be resolved in an orderly way under our Federal system is by this Court. In *Princess Lida* v. *Thompson*, 305 U. S. 456, where a state court had enjoined proceedings in a federal court and the federal court issued a counterinjunction, this Court said that it had granted certiorari because of "the unusual state of affairs, of the importance of the question involved" and of the claim that the state court injunction conflicted with its decisions. The situation here is comparable.

The opinion of the Supreme Court of Illinois holds: (1) The Michigan injunctions are not entitled to "full faith and credit"; (2) therefore, the courts of Illinois have the right, not merely to refuse to recognize them, *but to nullify them in Michigan by the issuance of a counter-injunction;* (3) a counterinjunction is necessary to "protect the jurisdiction" of the Illinois court over the death action, notwithstanding the Michigan injunctions only enjoined the administrator and are not directed to the Illinois court. It is petitioner's contention that in holding each of these propositions the Illinois Supreme Court denied petitioner its rights under the Federal Constitution.

1. The first step in the Illinois court's reasoning is that the Michigan injunctions were not entitled to "full faith and credit." Even if this were true the Illinois court would have no right to nullify them by a counterinjunction, but, at most, could only decline to recognize or enforce them. But if the Michigan injunctions are entitled to full faith and credit, it follows *a fortiori* that the counterinjunction ordered by the Illinois Supreme Court is contrary to the Federal Constitution, and we shall briefly discuss this question first.

This Court has never decided the question whether a decree enjoining a citizen from maintaining an action in

a foreign state is entitled to full faith and credit in the latter state in the sense that it must abate the action when the injunction has been shown.

In *Cole* v. *Cunningham*, 133 U. S. 107, this Court held that such an injunction did not constitute an attempt to control the courts of a sister state and was not in contravention of any right given by the Constitution of the United States, particularly the full faith and credit and privileges and immunities clauses. The principle of this case was recently reaffirmed in *Miles* v. *Illinois Cent. R. Co.*, 315 U. S. 698, 702. If the granting of such an injunction by a court of a citizen's own state does not violate any Federal constitutional right, it is impossible to see why such an injunction is not required to be recognized in a foreign state under the compulsion of the full faith and credit clause. The words of the constitution are plain and simple and contain no exceptions. They are "full faith and credit shall be given in each State to the Public Acts, records and *Judicial Proceedings* of every other state." The words "judicial proceedings" mean every kind of a judicial proceeding and are not limited to judicial proceedings involving a trial upon the merits of a cause of action.

In *Hampton* v. *McConnell*, 3 Wheat. 234, 235, decided 1818, Chief Justice Marshall said:

> "• • • the judgment of a state court should have the same credit, validity and effect, in every other court in the United States, which it had in the same where it was pronounced • • •"

It is true that, notwithstanding the broad and sweeping language of the clause, this Court has read one exception into it. But this single exception has no application to this case.

This Court, in *Williams* v. *North Carolina*, 317 U. S. 287, 294, said that, although "some exceptions have been en-

grafted on this rule," "so far as *judgments* are concerned the decisions, as distinguished from dicta, show that the actual exceptions have been few and far between, apart from *Haddock* v. *Haddock*"—which this Court proceeded to overrule. In a footnote it cited the decisions of *Fall* v. *Eastin*, 215 U. S. 1; *Olmsted* v. *Olmsted*, 216 U. S. 386; and *Hood* v. *McGehee*, 237 U. S. 611, and said, "These decisions refuse to require courts of one state to allow acts or judgments of another to control the disposition or devolution of realty in the former. They seem to rest on the doctrine that the state where the land is located is 'sole mistress' of its rules of real property."

The majority opinion cites no decisions of this Court for the proposition that the Michigan injunctions are not entitled to full faith and credit. All the state court cases on the subject have uncritically accepted some decisions of the Minnesota Supreme Court which have been based on interpretations of the privileges and immunities clause which, even if justified, notwithstanding *Cole* v. *Cunningham*, 133 U. S. 107, are no longer valid in the light of subsequent decisions of this Court.

Apparently, the first state court case on this point is *State* v. *District Court*, 126 Minn. 501, 148 N. W. 463, where an action was brought in Minnesota under the F. E. L. A. for injuries occurring in Iowa. The question presented was whether the Minnesota court, in the exercise of discretion, could decline jurisdiction. The Minnesota Supreme Court held in the negative, relying upon the privileges and immunities clause and citing *Chambers* v. *B. & O. R. Co.*, 207 U. S. 142. The actual holding in that case, however, was that the clause was not violated by a holding of the Ohio Supreme Court that a right of action for wrongful death created by a Pennsylvania statute could be maintained in Ohio only when the deceased was an Ohio citizen.

The Minnesota Supreme Court followed its earlier deci-

sion in *State* v. *District Court*, 140 Minn. 494, 168 N. W. 589. In that case the Court argued that, inasmuch as no foreign injunction could force the Court to close its doors to a resident of Minnesota, it could not discriminate by recognizing the injunction against a foreign suit. The "equal privileges and immunities" clause was held controlling over the "full faith and credit" clause. Two justices dissented on the theory that the Iowa decree determined that plaintiff had a right to protection against suit in the courts of Minnesota and that this right was entitled to full faith and credit under the Federal Constitution. The subsequent decision of this Court in *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, holding that a New York statute making it discretionary with the courts to entertain an action by a nonresident of the state against a foreign corporation doing business in the state as applied to an action under the F. E. L. A. by a resident of Connecticut for injuries sustained there did not violate the privileges and immunities clause, has undermined the entire basis for the result of the Minnesota court. Since that decision, this Court has held the doctrine of *forum non conveniens*, when impartially applied to citizens and noncitizens alike, does not violate the privileges and immunities clause. *Missouri ex rel. Southern R. Co.* v. *Mayfield*, 340 U. S. 1.

The privileges and immunities clause, therefore, does not permit the Court in the state in which the action has been enjoined to refuse to recognize the injunction and no other constitutional ground exists for declining to give it recognition.

The issue raised by petitioner's Michigan injunction actions was whether Illinois was a lawful forum in which to try the wrongful death action. The Michigan injunctions adjudged that the administrator could lawfully bring the action only in that state. The Michigan decrees deter-

mined that petitioner has the right to protection against a suit upon the alleged cause of action in Illinois. The rights so adjudicated have been protected by the Courts as valuable.

Nonrecognition of the Michigan decrees, to the extent of entertaining the death action in Illinois, would have to be based on the proposition that the administrator could lawfully bring an action in Illinois. But that is the very issue that the administrator lost in Michigan. The principle of *res adjudicata* embodied in the "full faith and credit" clause precludes relitigation of a question previously determined in Michigan. *Riley* v. *New York Trust Co.*, 315 U. S. 343, 348; *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 439. The Illinois court had no right under the Constitution to rule the opposite on a question already litigated and decided. As said by Justice Frankfurter in *People* v. *Halvey*, 330 U. S. 610, 616, "* * * the Framers deemed it against the national welfare for a controversy that was truly litigated in one to be litigated in another."

The Michigan decrees cannot be ignored or nullified on the theory they deprive the administrator of some Federal right. The Michigan court had jurisdiction over the person and subject matter, and "the full faith and credit clause precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles upon which the judgment is based * * * Whatever mistakes of law may underlie the judgment * * * it is 'conclusive as to all the *media concludendi*.'" *Milliken* v. *Meyer*, 311 U. S. 457, 462. Any contention that the Michigan injunctions violate Federal rights should have been presented to the Michigan courts, and, if denied by them, then to this Court by petition for writ of certiorari.

2. But the ultimate question here, not previously decided by this Court, goes much beyond whether a court of one state may refuse to give any credit to the judgment or decree of a sister state. *That question is whether, con-*

sistently with the full faith and credit clause, the Court of one state can nullify a decree in another state that was valid and binding upon the parties where entered.

In every "full faith and credit" case previously decided by this Court the question always has been whether the Court of one state must give effect to a judgment or decree of a court of a sister state. This Court has held in the negative where the Court in the state where the judgment was entered lacked jurisdiction over the parties or the subject matter. It has also held, in the *Fall, Olmsted* and *Hood* cases, p. 10 *infra*, that the domestic court did not have to recognize foreign judgments purporting to affect devolution or disposition of land in the state. In both classes of cases the Court in the foreign state has been held to have a mere negative power, *viz.*, a right to refuse to recognize the judgment.

The Illinois court has done much more than merely refuse to give any credit to the Michigan injunctions. It does not hold that they were invalid in Michigan for lack of jurisdiction or any other reason. On the contrary, the Illinois court recognizes that the decrees are valid and binding where entered, but in order to prevent them from being given any effect in Michigan it has ordered the issuance of a counterinjunction in Illinois. We do not think it an overstatement to say that the Illinois Supreme Court has in effect usurped the power of this Court and set itself up as a super state supreme court, claiming the right to invalidate decrees of courts of sister states valid and binding where entered.

Observe the startling claim of power made by the Illinois court: In the first part of its opinion it reaffirms its own power to restrain the prosecution of a prior instituted action in a sister state (App. 30), but it holds that if the court of another state should be so bold as to enjoin one of its own citizens from prosecut-

ing an action in Illinois it will retaliate by a counterinjunction. It thus claims for itself a power which it denies to the courts of the other 48 states. We submit that the claim by the Illinois court runs squarely into the teeth of the full faith and credit clause; if permitted to stand it can lead only to the chaos and judicial anarchy existent under the Articles of Confederation and which the Constitution sought to lay at rest. No court, consistently with that clause, can claim the right to invalidate a decree binding upon the parties in the state where entered where the Court had jurisdiction.

With one exception, not material here, the Court has never deviated from the principle laid down by Chief Justice Marshall in *Hampton* v. *McConnell*, 3 Wheat. 234, 235, that "The judgment of a state court should have the same credit, validity and effect, in every other court in the United States which it had in the same where it was pronounced * * * ." Certainly, the holding in the Illinois Supreme Court was directly contrary to the principle because in Michigan no other court (except the Supreme Court on appeal) could nullify the injunctions. The reality of the matter is that the Illinois Supreme Court has sat as a court of review of injunctions entered by the court of a sister state. In so doing it acted not only contrary to the full faith and credit clause, but the due process clause as well. The right of a party to be free from harassment and oppression in the prosecution of a claim against him is a valuable vested right. To take from petitioner its right to unhindered enforcement of the Michigan decrees after its rights under such decrees have been vested violates the most fundamental concepts of due process.

3. The Illinois court has claimed the right to nullify the Michigan decrees on the ground that this is necessary in order to "protect its jurisdiction" over the wrongful

death action. The death action, of course, is a mere transitory cause of action and the injunctions do not purport to affect a *res* in the custody of the Illinois court. Petitioner pointed out that since the injunctions were merely *in personam* (App. 36) they did not interfere with the jurisdiction of the Illinois court, but the Court responded:

> "The Illinois court is not so barren of authority, nor so calcified in its reasoning as to cower behind the equitable maxim that 'equity acts *in personam*,' and to parrot, as defendant urges that it is only the litigants and not the jurisdiction of this Court that is being interfered with by the Michigan injunction" (App. 39).

We submit that it was denial of full faith and credit and due process for the Illinois Supreme Court arbitrarily to ascribe an effect to the Michigan decrees that they do not have. The decrees in fact run only against the administrator. As the Illinois Supreme Court points out, from the days of Coke and Bacon it has been recognized that such decrees do not interfere with the jurisdiction of a foreign court. This has been uniformly held by all the authorities. 2 Story's Equity Jurisprudence (14th Ed.), § 1195; High on Injunctions (4th Ed), Vol. 1, p. 117; 28 Am. Jur., p. 381; Lewis & Spelling, Injunctions, § 37. The very doctrine was recognized by the Illinois Supreme Court in *Royal League* v. *Kavanagh*, 233 Ill. 175, 183, where it said, "The courts do not in such cases, pretend to direct or control the foreign court but the decree acts solely upon the party."

More important, this Court, in *Cole* v. *Cunningham*, 133 U. S. 107, 118, stated the same rule. It was restated in *Steelman* v. *All Continent Co.*, 301 U. S. 278, 291, where this Court said:

> "We are unable to yield assent to the statement of the court below that 'the restraint of a proper party

is legally tantamount to restraint of the court itself.' The reality of the distinction has illustration in a host of cases."

See, also, Justice Frankfurter's opinion in *Miles* v. *Illinois Cent. R. Co.*, 315 U. S. 698, 720.

The Illinois Supreme Court had no right arbitrarily to ascribe an effect to the Michigan decrees which they did not have in order to justify its attempted nullification of them. Where a Court has refused to give full faith and credit to the judgment of a court of a sister state because of its alleged effect, it is for this Court to judge for itself the nature and effect of the judgment. *Carpenter* v. *Strange*, 141 U. S. 87, 106; *Huntington* v. *Attrill*, 146 U. S. 657, 666, 683-86. The Illinois Court's action not only violates full faith and credit but due process as well.

We submit, that this petition presents Federal constitutional questions of the highest order that should be resolved by this Court to prevent, in the restrained language of the dissenting Illinois justices, "an unseemly kind of judicial disorder." The framers of the Constitution foresaw that states would become litigants and recognized that no state supreme court could properly sit in judgment on rights asserted by another state. Therefore, they wisely gave original jurisdiction of such controversies to this Court (Art. III, § 2). When the judiciary of two different states, through private litigants, start engaging in strife, they cannot decide for themselves the rightfulness of their own actions. This Court necessarily must act as arbiter. The "duel of injunctions" that threatens should be averted before it leads to a multiplicity of contempt actions.

CONCLUSION.

It is respectfully submitted that this case warrants further review. The petition for a writ of certiorari should be granted.

GEORGE B. CHRISTENSEN,
GERARD E. GRASHORN,
EDWARD J. WENDROW,
38 South Dearborn Street,
Chicago 3, Illinois,
Counsel for Petitioner.

WINSTON, STRAWN, SMITH & PATTERSON,
38 South Dearborn Street,
Chicago 3, Illinois,

FORBES B. HENDERSON,
EARL C. OPPERTHAUSER,
131 West Lafayette Blvd.,
Detroit, Michigan
Of Counsel.

APPENDIX A.

No. 47056.
LOUIS M. KAHL, Administratrix of the Estate of Colin Kahl, Deceased,
Appellant,
vs.
GRAND TRUNK WESTERN RAILROAD COMPANY, a corporation,
Appellee.
} Appeal from Superior Court, Cook County.

MR. PRESIDING JUSTICE ROBSON delivered the opinion of the Court.

This is an appeal from an order denying plaintiff's request to restrain defendant from seeking injunctive relief against her in the State of Michigan. The question presented is whether or not the public policy of Illinois is such that the court should grant the relief requested.

The record reveals that plaintiff, Lois M. Kahl, a resident of Cass County, Michigan, as administratrix of her husband's estate, brought an action in the Superior Court of Cook County under a Michigan statute allowing an action for wrongful death. The complaint alleges that the negligence of the defendant caused a collision between one of defendant's trains and an automobile driven by the decedent, which resulted in the death of decedent. The collision occurred at a grade crossing in Cass County, Michigan, on February 16, 1955. The Illinois complaint was filed on February 16, 1956, and summons was served upon defendant on February 17, 1956. On March 6, 1956, defendant filed a bill in chancery in the Circuit Court of Cass County, Michigan, to enjoin the plaintiff from prosecuting her action in Illinois. On that date the Circuit

Court of Cass County ordered plaintiff to show cause why a temporary injunction should not issue, and, pending a determination of that order, that she be restrained from further prosecuting the Illinois action.

The defendant obtained a number of extensions of its time to plead in the Illinois action. On July 15, 1956, it filed an answer setting forth the restraining order of March 6, 1956, entered in the Circuit Court of Cass County, Michigan. At oral argument both parties stipulated that since this appeal was filed the Michigan court had entered a permanent injunction against plaintiff, from which she has appealed.

Meanwhile, on July 5, 1956, plaintiff filed a motion in the Superior Court of Cook County requesting an order restraining defendant from further prosecuting its bill in the Michigan court. That motion was denied, and plaintiff filed an additional motion to amend the order of July 5, 1956, by adding the finding that the order was final and appealable, together with a supplemental complaint requesting an injunction against further prosecution of the Michigan action. After a hearing, the relief requested was denied, and the appropriate finding was entered, making possible an appeal to this court from the denial of the relief requested.

On these facts was the trial court required to enjoin defendant from maintaining its bill in the Michigan court?

Plaintiff is a citizen of Michigan and a resident of Cass County in that state. She was appointed administratrix of her husband's estate by the Circuit Court of Cass County. The accident resulting in her husband's death occurred at a grade crossing in Cass County. Plaintiff has been able to invoke the jurisdiction of the Superior Court of Cook County because defendant is a corporation which does business in Illinois. However, a Michigan statute (Sec. 27.641 M. S. A.) provides that where the line of a

railroad traverses the county in which the plaintiff resides, suit against the railroad shall be brought in that county. In *Pere Marquette Ry. Co.* v. *Slutz*, 268 Mich. 388, 256 N. W. 458 (1934), the Supreme Court of Michigan upheld the authority of a Michigan court to enjoin a plaintiff in an Illinois action (defendant in the Michigan action) from maintaining the suit in Illinois under facts almost identical to those in the case at bar. There the court referred to the Michigan venue statute as follows (268 Mich. 390, 391):

> "This statute required plaintiff in the action at law to bring suit in Van Buren county. The evident purpose of the statute is to keep the venue of actions against railroads close to the point where witnesses are available. It was the duty of defendant herein to comply with this statute, and the court was fully justified in restraining him from prosecuting the action at law in a foreign jurisdiction.
>
> "The decree, restraining defendant from prosecuting the action at law in the State of Illinois, is affirmed, with costs to plaintiff."

Historically, the courts of Illinois are reluctant to enjoin a party within their jurisdiction from maintaining an action in another state, except where it appears clearly that the maintenance of an action would result in fraud, gross wrong or oppression. *Harris* v. *Pullman*, 84 Ill. 20 (1876); *Royal League* v. *Kavanagh*, 233 Ill. 175 (1908); *Illinois Life Ins. Co.* v. *Prentiss*, 277 Ill. 383 (1917); *Catherwood* v. *Hokanson*, 201 Ill. App. 462 (1916); *Brinkerhoff* v. *Huntley*, 223 Ill. App. 580 (1921); *Wabash Ry. Co.* v. *Lindsey*, 269 Ill. App. 152 (1933). In *Harris* v. *Pullman, supra*, the court stated that where an action had already been commenced in another jurisdiction, it was inconsistent with interstate harmony that its prosecution should be controlled by the courts of another state, citing two early New York cases (*Mead* v. *Merritt*, 2 Paige 404,

and *Bicknell* v. *Field*, 8 Paige 443). This distinction between actions already commenced and those which might be commenced was ignored in *Royal League* v. *Kavanagh*, *supra*, and *Illinois Life Ins. Co.* v. *Prentiss*, *supra*, although neither case involved an action already commenced, and, in each, the requested injunction was denied. An injunction has also been denied in cases in which the action in a foreign jurisdiction had already been commenced. *Catherwood* v. *Hokanson*, *supra*; *Brinkerhoff* v. *Huntley*, *supra*; *Wabash Ry Co.* v. *Lindsey*, *supra*. In those cases the court indicated the power to interpose in an action already commenced, by means of an injunction against one of the parties, existed in instances of fraud and gross oppression.

Injunctions have been issued by the courts of this State to prevent threatened divorce proceedings in other jurisdictions. *Kahn* v. *Kahn*, 325 Ill. App. 137 (1945); *Russell* v. *Russell*, 329 Ill. App. 580 (1946). In those cases the court sought to avoid the circumvention of the laws of Illinois. In *Kleinschmidt* v. *Kleinschmidt*, 343 Ill. App. 539 (1951), the plaintiff in an Illinois divorce action had filed that action six months after leaving her residence with the defendant in Florida, shortly before he filed a suit against her in that state. The court reversed an order enjoining the Illinois defendant from maintaining his action in Florida on the ground that these facts indicated no fraud or gross oppression. In summary, the Illinois courts have recognized their own power to enjoin parties within their jurisdiction from *commencing* or *maintaining* an action in another jurisdiction, but have been extremely reluctant to exercise this power.

Plaintiff in the instant case contends that the Michigan proceedings constitute a threat to the authority of an Illinois court to exercise jurisdiction at the instance of a nonresident plaintiff, and that, where the jurisdiction

of an Illinois court is invoked prior to any proceeding elsewhere, public policy requires the court to prevent any encroachment on its authority by a court of another jurisdiction. The decisions of our courts, which indicate that fraud, gross wrong, or oppression are the only grounds upon which our courts will interfere in foreign litigation, militate strongly against the issuance of a retaliatory injunction for the sole purpose of preserving jurisdiction so tenuously attained as that in the instant case. The only thread linking Illinois to the issue, at all, is the fact that defendant is a corporation doing business in this State. Other than that the action involves a foreign occurrence, a foreign plaintiff, foreign witnesses, foreign law, and a defendant equally susceptible to the jurisdiction of a foreign tribunal. Under such circumstances, we can see no basis to view with alarm the action of the Michigan court.

The question now before this court does not require us to pass on the recognition to be afforded the Michigan decree, although there is some pertinent dicta on this point in *Kleinschmidt v. Kleinschmidt, supra*, which is as follows (p. 546):

> "It is apparent that an injunction against the prosecution of an action in another State acts upon the parties rather than the court, and, therefore, the court in which the enjoined action is pending has the power to proceed with the litigation despite the injunction (28 Am. Jur. 392; 128 A. L. R. 1469). Nevertheless, that court will generally take cognizance of the judicial processes of another State, and recognize an injunction issued by the court of another State as a matter of comity (43 C. J. S. 504; *Allen* v. *Chicago Great W. R. Co.*, 239 Ill. App. 38)."

In situations such as that presented by the instant case, the principle of comity is the one method of staving off a preposterous duel of injunctions between the courts of

Michigan and Illinois which can only end in a compilation of contempt orders in each of the states involved. This would result in bringing the courts into ridicule, rather than aiding in the promotion of justice.

We do not consider cases involving jurisdictional disputes under the Federal Employer's Liability Act relevant to the present action because the Act contains its own jurisdictional provision, and determinations thereunder are matters of Federal law, rather than comity between the states. See *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698 (1942).

We find no public policy in this State favoring the relief requested by the plaintiff. The order of the trial court is affirmed.

Order affirmed.

SCHWARTZ and MCCORMICK, *JJ.*, concur.

APPENDIX B.

Docket No. 34546—Agenda 13—January, 1958.

Lewis W. James, Admr. of the Estate of Colin Kahl, Appellant, v. Grand Trunk Western Railroad Company, Appellee.

Mr. JUSTICE BRISTOW delivered the opinion of the court:

This court has allowed leave to appeal from an Appellate Court judgment affirming the dismissal of a supplemental complaint and the denial of a motion to enjoin the defendant railroad from enforcing an injunction it obtained in Michigan restraining plaintiff Lois M. Kahl, then administratrix, from proceeding with her wrongful death action in the superior court of Cook County.

The issues are essentially whether the Illinois court, having prior jurisdiction of a wrongful death action instituted by a nonresident plaintiff, must recognize an out-of-State injunction restraining the plaintiff from proceeding with that action; and whether the Illinois court, to protect its jurisdiction of the wrongful death action, may issue a counterinjunction restraining defendant from enforcing its injunction against plaintiff in the State of her residence.

The operative facts pertaining to these issues are uncontroverted. Plaintiff, Lois M. Kahl, as administratrix of her deceased husband's estate, instituted suit against defendant, Grand Trunk Western Railroad Company, on February 16, 1956, in the Illinois court, under the Michigan Wrongful Death Act (Mich. Stat. Ann., sec. 27.712) for the death of her husband on February 16, 1955, allegedly through the negligence of the defendant railroad. Defend-

ant obtained, without notice to plaintiff, a temporary injunction in Cass County, Michigan, where plaintiff resided, restraining plaintiff from prosecuting her Illinois action. Plaintiff thereupon filed a supplemental complaint in the Illinois court, alleging that defendant had failed to question plaintiff's right to proceed in the Illinois court by appropriate motion therein; that plaintiff believed that she could not obtain a fair trial in Cass County, Michigan; that such Michigan suit was instituted by defendant to prevent plaintiff from obtaining a fair trial in the Illinois courts and to force her into an unjust settlement of her cause of action, and would result in irreparable injury.

On the basis of these allegations, plaintiff moved for a temporary injunction enjoining the enforcement of the Michigan injunction. On August 9, 1956, the trial court denied plaintiff's motion, and also dismissed her supplemental complaint, although no answer or counteraffidavits were filed by defendant in connection therewith. Plaintiff appealed, and the Appellate Court affirmed the trial court on May 21, 1957.

Plaintiff did not appeal from the Michigan injunction when it was learned that the appeal bond would not have the effect of staying the proceedings. Thereafter, plaintiff was arrested pursuant to a body attachment issued by the Michigan court on the application of defendant's counsel, O'Connor, and was advised that she would be imprisoned for contempt unless she complied with the injunction. Although she then wrote to her Illinois attorney discharging him and directing him to withdraw her case from the Illinois courts, she subsequently advised him that the letter did not express her true desires, but had been coerced by threat of imprisonment by defendant's counsel.

A second injunction suit was instituted by defendant in Cass County, Michigan. Plaintiff did not appear and was defaulted, and an order was entered by the Michigan court

on July 17, 1957, enjoining her from further prosecuting her Illinois action and directing her to withdraw it.

Thereafter, on September 6, 1957, upon a showing that defendant's attorney was insisting that plaintiff sign a stipulation to dismiss her Illinois proceedings, a Justice of this court entered an order restraining the defendant from taking further action against plaintiff on the two Michigan injunction suits, "or in any other suit filed in said Court of Cass County, Michigan, or in any other Court, until the Supreme Court of Illinois has acted upon the Petition for Leave to Appeal." On September 20, 1957, this court denied defendant's motion to vacate that restraining order, allowed the petition for leave to appeal, and entered a similar injunction restraining defendant until this court disposed of the case.

On the same day, defendant's counsel, O'Connor, who is also prosecuting attorney for Cass County, Michigan, filed a petition in the probate court of Cass County to remove plaintiff as administratrix. On September 26, 1957, the probate court of Cass County removed plaintiff as administratrix and appointed Adam Greenawalt as administrator to succeed her.

Greenawalt's affidavit, filed in this court, indicates that he is 83 years of age, is bailiff of the circuit court of Cass County; that upon being appointed administrator he was advised by defendant's counsel, O'Connor, that the estate might have a cause of action against the railroad; that he contacted an attorney and instructed him to consult with O'Connor, but this attorney did not desire to handle the case, whereupon Greenawalt advised O'Connor that he desired to retain counsel outside of Cass County and asked O'Connor to have Donahue, an attorney from another county, contact him. Donahue turned the matter over to his assistant, Drew, who instituted action in Cass County on behalf of Greenawalt as administrator of the estate.

On November 20, 1957, Lewis W. James was appointed to succeed Greenawalt as administrator, and in Greenawalt's letter to his successor he stated that he had not even talked to Drew about the case, and that all arrangements for Drew to represent the claim against the railroad were made by the defendant railroad's attorney O'Connor.

With reference to these circumstances, the railroad takes the position that it did not violate the temporary injunctive order of September 20, 1957, because the act of its Michigan attorney in having plaintiff removed as administratrix was taken by O'connor as prosecuting attorney for Cass County, Michigan, despite defendant's request to defer such action. Defendant also explained that O'Connor advised defendant that he intended to prosecute the petition for plaintiff's removal on his own, irrespective of the railroad's instructions, since under his contract with defendant, his duties as public officer would prevail over his duties as counsel. Moreover, defendant contends that even if the railroad had instituted the removal proceeding, that action would not constitute a violation of the terms of this court's order.

On this appeal plaintiff argues that she had an unquestionable right to file the action in the Illinois court; that where a court has obtained prior jurisdiction of an action, injunctive relief is proper to prevent defendant from transferring the action elsewhere through an action in another forum; and that neither the full-faith-and-credit clause nor comity require the Illinois court to respect the Michigan venue statute and the decision of the Michigan court in this case.

The defendant argues, however, that this court will not, by counterinjunction, aid a citizen of another State to violate an injunction against prosecuting an action in Illinois; that the counterinjunction cannot be justified to protect the prior injunction of the Illinois court, since the

Michigan injunction was *in personam* only; and that such counterinjunction would compel a party to give up vested rights and would violate the full-faith-and-credit and due-process clauses of the Federal constitution.

The precise issues of the operative effect of an out-of-State injunction on pending litigation, and the propriety of the issuance of a counterinjunction involved herein, have never been adjudicated by this court. Consequently, in resolving those issues we shall consider not only the cases of other jurisdictions relied upon as precedent, but the relevant policies of this jurisdiction underlying the issues, as well as the wealth of law and comment by courts and scholars who have wrestled with the legal strategem of this battle over the selection of the proper forum for trial. Place of Trial in Civil Actions, 43 Harv. L. Rev. 1217; 61 Yale L. J. 1206; 14 Minn. L. Rev. 494; 6 A.L.R. 2d 896 *et seq;* 122 A.L.R. 1425 *et seq.;* 85 A.L.R. 1351 *et seq.;* 37 Harv. L. Rev. 157; 72 U. Pa. L. Rev. 429.

In the instant case it is uncontroverted that the Illinois trial court had proper jurisdiction of the parties, and that it was bound under the full-faith-and-credit clause of the Federal constitution to recognize the Wrongful Death Act of Michigan, and could not refuse to entertain plaintiff's action on the ground that it was based on the wrongful death statute of a sister State. (*First National Bank of Chicago* v. *United Air Lines, Inc.*, 342 U. S. 396, 96 L. ed. 441; *Hughes* v. *Fetter*, 341 U. S. 609, 95 L. ed. 1212; *Miles* v. *Illinois Central Railroad Co.*, 315 U. S. 698, 703, 86 L. ed. 1129; 61 Yale L. J. 1206.) Moreover, it is the undisputed policy of this State to keep its courts open to residents and nonresidents alike. (*Wintersteen* v. *National Cooperage and Woodenware Co.*, 361 Ill. 95; *Opp* v. *Pryor*, 294 Ill. 538.) In that connection, the court in the *Wintersteen* case stated at p. 101: "Neither does the fact that the plaintiff is a non-resident deprive him of his remedy in the courts of

this State. There is no statute in the State denying redress of grievances by reason of non-residence. The policy of our State has always been to permit persons regardless of residence to bring suits in our courts. Citizenship has never been a condition precedent to the right of an individual to sue in our courts. [Citations.]"

Where, however, suits by nonresidents have no connection whatever with this jurisdiction, and the selection of this forum is purely vexatious, this court has held, pursuant to the authorization by the United States Supreme Court (*Missouri ex rel. Southern Railway Co. v. Mayfield*, 340 U. S. 1, 95 L. ed. 3) that the doctrine of *forum non conveniens* may be invoked to dismiss such cases. (*Cotton* v. *Louisville and Nashville Railroad Co.*, 14 Ill. 2d 144.) In the instant case, however, no such defense of *forum non conveniens* was interposed by defendant. Instead, it sought to remove the case from the Illinois court by enjoining plaintiff in the State of her residence from prosecuting the Illinois action.

With reference to the Michigan injunction, while we quite agree with defendant's repeated assertion that a court of equity has power to restrain persons within its jurisdiction from instituting or proceeding with foreign actions (*Cole* v. *Cunningham*, 133 U. S. 107, 33 L. ed. 538; 6 A. L. R. 2d 896), we note that the exercise of such power by equity courts has been deemed a matter of great delicacy, invoked with great restraint to avoid distressing conflicts and reciprocal interference with jurisdiction. 14 Am. Jur. 451; *Harris* v. *Pullman*, 84 Ill. 20; *Royal League* v. *Kavanagh*, 233 Ill. 175; *O'Loughlin* v. *O'Loughlin*, 6 N. J. 170, 78 A. 2d 64; *Boston and Maine Railroad Co.* v. *Whitehead*, 307 Mass. 106, 29 N. E. 2d 532.

Illinois has consistently followed the course of refusing to restrain the prosecution of a prior instituted action pending in a sister State unless a clear equity is presented re-

quiring the interposition of the court to prevent a manifest wrong and injustice; and neither a difference of remedy afforded by the domicile and the forum nor mere inconvenience and expense of defending will constitute grounds for such an injunction. (*Western Union Telegraph Co.* v. *Pacific and Atlantic Telegraph Co.*, 49 Ill. 90; *Harris* v. *Pullman*, 84 Ill. 20; *Thorndike* v. *Thorndike*, 142 Ill. 450; *Royal League* v. *Kavanagh*, 233 Ill. 175, 183; *Illinois Life Ins. Co.* v. *Prentiss*, 277 Ill. 383; *Mobile and Ohio Railroad Co.* v. *Parrent*, 260 Ill. App. 284; *Wabash Railway Co.* v. *Lindsey*, 269 Ill. App. 152.) That course is based on the policy that after suits are commenced in one State, it is inconsistent with inter-State harmony if their prosecution be controlled by the courts of another State. *Harris* v. *Pullman*, 84 Ill. 20, 28.

Conversely, where other States have enjoined litigants from proceeding with a previously instituted Illinois action, this jurisdiction has followed the overwhelming judicial opinion that neither the full-faith-and-credit clause nor rules of comity require compulsory recognition of such injunctions so as to abate or preclude the disposition of the pending case. Restatement, Conflict of Laws, sec. 450, p. 534; 21 C. J. S. 860; 43 C. J. S. 503; *Taylor* v. *Atchison, Topeka and Santa Fe Railway Co.*, 292 Ill. App. 457; *Kleinschmidt* v. *Kleinschmidt*, 343 Ill. App. 539; *Alford (Lindsey)* v. *Wabash Railway Co.*, 229 Mo. App. 102, 61 S. W. 2d 369, and 73 S. W. 2d 277; *Union Pacific Railway Co.* v. *Rule*, 155 Minn. 302, 193 N. W. 161; *Kepner* v. *Cleveland, Cincinnati, Chicago and St. Louis Railway Co.*, 322 Mo. 299, 155 S. W. 2d 825, cert. denied 280 U. S. 564; *Frye* v. *Chicago, Rock Island and Pacific Railway Co.*, 157 Minn. 52, 195 N. W. 629, cert. denied 263 U. S. 723; *Leet* v. *Union Pacific Railway Co.*, 25 Cal. 2d 605, 144 P. 2d 64, subsequent opinion 155 P. 2d 42; *State ex rel. Bossung* v. *District Court*, 140 Minn. 494, 168 N. W. 589; *Peterson*

v. *Chicago, Burlington and Quincy Railway Co.*, 187 Minn. 235, 244 N. W. 823; *Doyle* v. *Northern Pacific Railroad Co.*, 55 F. 2d 708.

In refusing to recognize and give legal effect to an out-of-State injunction restraining nonresidents from prosecuting a previously instituted Illinois case, the Illinois Appellate Court in *Taylor* v. *Atchison, Topeka and Santa Fe Railway Co.*, 292 Ill. App. 457, relied upon *Alford* v. *Wabash Railway Co.*, 229 Mo. App. 102, 73 S. W. 2d 277, where the Missouri court clearly expressed this majority rule. The court reiterated the language in a prior hearing of the case (*Alford (Lindsey)* v. *Wabash Railway Co.*, 61 S. W. 2d 369) and stated: "Defendant's first point is that the court below erred in refusing to abate this suit on account of the injunction. There is no question but that the circuit court of Morgan County had jurisdiction to issue an injunction in a case of this kind [citation], but the decisions are in conflict as to whether the court wherein the suit is pending, the prosecution of which is sought to be enjoined, will stay the proceedings or abate the suit by reason of such an injunction. If it does so, it is not because the Federal constitution requires it so to act, but solely upon the ground of comity. [Citation.] The right of the circuit court of Daviess County to proceed having attached before the injunction, we know of no rule of comity that would require the court below to discontinue the proceedings in this case."

Similarly, in *State ex rel. Bossung* v. *District Court*, 140 Minn. 494, 168 N. W. 589, the Minnesota court held that irrespective of the propriety of the out-of-State injunction restraining the plaintiff from proceeding with the local action, the local court could be compelled by a writ of *mandamus* to proceed with the pending wrongful death action based upon a foreign statute. The court further noted that if it refrained from proceeding with the case

because of the injunction issued by a court of a sister State, such court would be given substantial control over Minnesota litigation.

It would serve no purpose to discuss each of the aforementioned citations, which are in accord. Suffice to note, there is negligible authority for the recognition of foreign injunctions in the local court where the case is pending (39 Yale L. Rev. 719), as urged by defendant.

Although such a foreign injunction was recognized on the grounds of comity by the Mississippi court in *Fisher* v. *Pacific Mutual Life Ins. Co.*, 112 Miss. 30, 72 So. 846, cited by defendant, that decision was specifically rejected as authority by the court in the *Bossung* case, and has not had wide approbation in other jurisdictions.

Defendant also cites the Illinois Appellate Court cases of *Kleinschmidt* v. *Kleinschmidt*, 343 Ill. App. 539, and *Allen* v. *Chicago Great Western Railroad Co.*, 239 Ill. App. 38, but it is not clear how they can be deemed to support defendant's position. In the *Kleinschmidt* case the court stated that it was not required to recognize such an out-of-State injunction, and while the court might do so out of comity, failure to do so would in no way affect the validity of its decision. In considering the merits of the cause, the court held that since litigation on the merits had previously been instituted in the Florida court, that court should be permitted to proceed with the disposition of the cause.

Nor can defendant take comfort in the *Allen* case, where the plaintiff had commenced an action on the merits in a sister State, and while such action was pending, plaintiff instituted a similar action on the identical cause in Illinois, which defendant enjoined, and the Illinois Appellate Court held that it was an abuse of discretion to deny defendant's motion to continue the Illinois action pending the determination of the original cause in the sister State.

Clearly, in both of those cases it was not the issuance of the out-of-State injunction, but the prior institution of the original cause of action in another State that deterred the Illinois Appellate courts from adjudicating them. Consequently, those decisions lend authority to plaintiff's contention that a court which first obtains jurisdiction of the merits of a cause should be permitted to retain it until the cause is finally adjudicated, without interference from the courts of other States. In fact, the *Allen* case reaffirms and quotes from the *Kavanagh* case, where that rule is stated at p. 183: "A person has the right to select such tribunal having jurisdiction as he chooses for the prosecution of his rights, and the court which first obtains jurisdiction will retain it. Such jurisdiction cannot be defeated because the defendant may prefer another tribunal in which he supposes the decision will be more favorable to him."

In the instant case the Michigan injunction was apparently issued pursuant to the policy of the State embodied in a Michigan venue statute restricting venue in suits against railroads to the county in which plaintiff resides, if the railroad lines traverse that county. Complied Laws, Mich. 1948, sec. 610.1.

While it is not the province of this court to adjudge the constitutionality of the Michigan venue statute, it may be noted that similar statutes confining transitory actions to the State of plaintiff's residence have been held unconstitutional. (*Atchison Topeka and Santa Fe Railway Co.* v. *Sowers*, 213 U. S. 55, 53 L. ed. 695; *Tennessee Coal, Iron, and Railroad Co.* v. *George*, 233 U. S. 354, 58 L. ed. 997.) In the *Tennessee Coal Company* case the court stated at p. 360: "But venue is no part of the right; and a state cannot create a transitory cause of action and at the same time destroy the right to sue on that transitory cause of action in any court having jurisdiction. That jurisdiction is to be determined by the law of the court's creation, and cannot

be defeated by the extraterritorial operation of a statute of another state, even though it created the right of action."

In the light of this reasoning, we cannot escape the observation that if statutes prohibiting or circumscribing the export of causes of action may not be given extraterritorial effect, it is hard to see why an equity decree should be entitled to any greater recognition. A court should be subject to the same limitations. 43 Harv. L. Rev. 1217, 1245; 37 Harv. L. Rev. 157, 158.

Therefore, it is evident that legal consistency, as well as the weight of authority, do not require us to recognize the Michigan injunction, and we may retain jurisdiction and proceed with plaintiff's wrongful death action. Such a course, however, is not practicable in the instant case, unless plaintiff, who is subject to imprisonment and other coercive tactics if she fails to dismiss her Illinois action, is protected by enjoining defendant from enforcing the Michigan injunction by contempt proceedings. A plaintiff cannot be expected or required to risk imprisonment so that the court may retain jurisdiction of a cause.

This brings us to the ultimate issue in this case: whether the court which first acquires jurisdiction of the parties and of the merits of the cause can issue a counterinjunction restraining a party before it from enforcing an out-of-State injunction which requires the dismissal of the local cause and ousts the forum of jurisdiction.

There is no quarrel with the basic principle that a court has a duty, as well as power, to protect its jurisdiction over a controversy in order to decree complete and final justice between the parties and may issue an injunction for that purpose, restraining proceedings in other courts. 43 C. J. S. 499; *National City Bank of New York* v. *Beebe*, 131 N. Y. S. 2d 67; 6 A. L. R. 2d 896, 902; 122 A. L. R. 1425; 14 Am. Jur. 435.

Defendant, however, claims that there is no reason to invoke this principle in the instant case since the Michigan injunction in no way interferes with the jurisdiction of this court, but merely affects the litigants. In support thereof defendant cites the equitable maxim, "equity acts *in personam*," invoked since the days of Coke and Bacon to obviate open conflicts between law and equity courts, and the general principle that courts of equity have the power to prevent those amenable to their own process from instituting or carrying on suits in other States which will result in injury or fraud.

In applying these principles to the instant case, we cannot close our eyes to the fact that the intended effect of the Michigan injunction, though directed at the parties and not at this court, is to prevent the Illinois court from adjudicating a cause of action of which it had proper jurisdiction. For it is patent that if the litigants are coerced to dismiss the Illinois action, it is our rightfully acquired jurisdiction that is thereby destroyed. Therefore, the Michigan injunction was in everything but form an order restraining the Illinois court and determining the cases it may properly try.

In determining whether a counterinjunction may be issued to protect our jurisdiction from such interference, we note that such counterinjunctions were authorized by the courts in *Chicago, Milwaukee and St. Paul Railway Co.* v. *Schendel*, 292 Fed. 326, and in *Peterson* v. *Chicago Burlington and Quincy Railway Co.*, 187 Minn. 235, 244 N. W. 823, cited by plaintiff. In the *Schendel* case the Minnesota district court in which plaintiff originally filed an F. E. L. A. action, in order to protect its jurisdiction in that cause, enjoined the defendant railroad from enforcing an Iowa injunction which restrained plaintiff and the witnesses from participating in the Minnesota action. The basis for its decision is stated at p. 334: "The federal court having acquired such jurisdiction had the right to retain and pro-

tect it from interference until the determination of the cause. The state had no right to interfere by preventing witnesses from giving testimony and thus practically destroying the power of the federal court to act. If the federal courts under such circumstances cannot protect their jurisdiction they become impotent as instrumentalities of justice."

Similarly, a State court was also held entitled to issue a counterinjunction to protect its prior jurisdiction from interference by the injunctive process of a sister State issued against the plaintiff. (*Peterson* v. *Chicago Burlington and Quincy Railroad Co.*, 187 Minn. 235, 244 N. W. 823.) In the *Peterson* case the Minnesota State court in which plaintiff commenced her F. E. L. A. action ordered the defendant railroad to dismiss its Iowa injunction proceedings restraining the administrator of the estate from maintaining a death action in Minnesota or in any other State.

Although we recognize that these cases involved F. E. L. A. actions and Federal rights, nevertheless, since the determinative factor in the issuance of the counterinjunction in each case was not the nature of the claim asserted, but rather the protection of the court's prior jurisdiction over a transitory action, we regard those cases as relevant authorities. Moreover, they are in accordance with the policy of this State set forth in the *Kavanagh* case at p. 183, proclaiming a person's right "to select such tribunal having jurisdiction as he chooses for the prosecution of his rights, and the right of the court which first obtains jurisdiction to retain it."

The only relevant authority cited by defendant, denying the power to issue the counterinjunction, is *State ex rel. New York, Chicago and St. Louis Railroad Co.* v. *Nortoni*, 331 Mo. 764, 55 S. W. 2d 272. Plaintiff therein filed an F. E. L. A. action in the Missouri court, and, after defendant procured an injunction in Indiana restraining plaintiff

from prosecuting that Missouri case, plaintiff sought to enjoin defendant from enforcing the Indiana contempt proceedings. The Missouri court, on the basis of *In re Crandall*, 53 F. 2d 969, holding that a resident may be enjoined from prosecuting an F. E. L. A. case in other States, reasoned that since the Indiana court had power to entertain the injunction proceeding, its decree was therefore valid and enforceable by contempt proceedings, which should not be enjoined. The Missouri court quoted the applicable rule of law at p. 274: "It is familiar law that where the jurisdiction of a court and the right of a party to prosecute the proceeding therein have once attached, that right cannot be arrested or taken away by proceedings in another court."

In evaluating the decision as precedent, it is apparent first that since *In re Crandall* no longer represents the law, and a State court may not enjoin a resident from prosecuting an F.E.L.A. action in another State or Federal court (*Miles* v. *Illinois Central Railroad Co.*, 315 U. S. 698; *Baltimore and Ohio Railroad Co.* v. *Kepner*, 314 U. S. 44, 86 L. ed. 28; *Pope* v. *Atlantic Coast Line Railroad Co.*, 345 U. S. 379, 97 L. ed. 1094, 73 S. Ct. 749), that Indiana injunction, recognized and protected by the Missouri court, would now be deemed improper. Furthermore, while the Missouri court in the *Nortoni* case enunciated "familiar law," it failed to properly apply that law, and overlooked completely the fact that the jurisdiction of the Missouri court attached even prior to the Indiana injunction proceeding, and according to that "familiar law" the right of the plaintiff to prosecute that Missouri action should not have been "arrested or taken away by proceedings in another court." Consequently, in the light of the inconsistency in its reasoning, as well as the change in the law of the case on which it is based, the *Nortoni* case is of doubtful value as a precedent.

Moreover, we cannot perceive how the cases cited by

defendant holding that Illinois will not enjoin litigation on the merits pending in other States support defendant's contention that the counterinjunction should be denied in the instant case. On the contrary, the Illinois court should be entitled to the same respect for its jurisdiction that it accords the courts of other States, and in the absence of such respect, should be able to protect its jurisdiction from unjustifiable interference by the courts of other States. It is one thing for Illinois to have a policy against enjoining pending litigation on the merits in other States, in the absence of cogent equitable grounds, but it is quite another to stand by impotently and see a litigant, in a case of which the Illinois court has prior jurisdiction of the merits, forced by an out-of-State injunction to dismiss that legitimate cause of action for no reason other than that defendant would prefer to defend the lawsuit elsewhere. Reluctance to be an interloper is not synonymous with abdication.

In the instant case, furthermore, this court would not only be deprived of jurisdiction, but would be required to remain oblivious of defendant's coercive tactics of having plaintiff removed as administratrix of her husband's estate as punishment for proceeding with her Illinois action, and superseded by an administrator who was not only friendly to defendant, but who selected counsel to prosecute the estate's claim against defendant, subject to defendant's approval and direction. Neither the Federal constitution, nor comity requires such abdication.

The Illinois court is not so barren of authority, nor so calcified in its reasoning, as to cower behind the equitable maxim that "equity acts *in personam*," and to parrot, as defendant urges, that it is only the litigants and not the jurisdiction of this court that is being interfered with by the Michigan injunction. We are entitled to recognize that their coercion destroys our jurisdiction, and unless we can

protect the litigant from such coercion, it is idle to say that we can protect our jurisdiction.

Under our analysis of the authorities, if Illinois were not the appropriate forum to try this, or any other transitory action, the defense of *forum non conveniens* could be interposed, and, if meritorious, the Illinois court would dismiss the case. However, this court need not, and will not, countenance having its right to try cases, of which it has proper jurisdiction, determined by the courts of other States, through their injunctive process. We are not only free to disregard such out-of-State injunctions, and to adjudicate the merits of the pending action, but we can protect our jurisdiction from such usurpation by the issuance of a counterinjunction restraining the enforcement of the out-of-State injunction.

It was therefore error for the trial court to dismiss plaintiff's supplemental complaint and her motion for a counterinjunction, and its order, and the judgment of the Appellate Court affirming it, must be reversed and the cause remanded to the trial court to proceed in accordance with the views expressed in this opinion.

Reversed and remanded, with directions.

Mr. JUSTICE SCHAEFER, dissenting:

The Michigan injunction appears to have been based (1) upon the venue statute of that State which requires that an action against a railroad be brought in the county of the plaintiff's residence if the railroad's lines traverse that county, and (2) upon allegations as to impossibility of compelling the attendance of witnesses in Illinois and the added expense and inconvenience of trying the action in Illinois. On the authority of *Atchison, Topeka & Santa Fe Railway Co.* v. *Sowers*, 213 U. S. 55, 53 L. ed. 695, and *Tennessee Coal, Iron & Railroad Co.* v. *George*, 233 U. S.

354, 58 L. ed. 997, defendant concedes that Illinois is not required to give full faith and credit to the Michigan venue statute. It urges, however, that Illinois is required to give full faith and credit to the injunction issued by the Michigan court.

I agree with the majority that in situations like the present one, the useful maxim "equity acts *in personam*" does not tell the full story. By concentrating upon the immediate effect of the injunction it overlooks the purpose for which it was sought and the result that it must achieve if it is to accomplish its purpose. When the Chancellor, in Bacon's day, enjoined the successful party from enforcing the judgment he had obtained at law, the end result was an interference with the processes of the law courts. In the same way, if the Michigan injunction accomplishes its purpose, the operation of the Illinois courts will have been interfered with. It is this inevitable interference with the operation of the courts of sister States that has largely prompted this court's reluctance to authorize the issuance of such injunctions. And I think that this inevitable interference has a bearing upon the claim of such an injunction to recognition under the full-faith-and-credit clause.

So far as I have been able to ascertain, no court has as yet held that such an injunction is entitled to full faith and credit in the sense that the action toward which the injunction is directed must be abated. When such injunctions have been recognized, it has been because the State in which the action is pending has chosen to do so as a matter of comity, and not because it was required to do so by constitutional command. *Allen* v. *Chicago Great Western Railroad Co.*, 239 Ill. App. 38; *Odom* v. *Langston*, (W. D. Mo.) 75 F. Supp. 651; *Fisher* v. *Pacific Mutual Life Insurance Co.* (Miss.) 72 So. 846; *Equitable Life Assurance Soc.* v. *Gex's Estate* (Miss.), 186 So. 659.

While the courts appear to agree that injunctions like

this one are not entitled to full faith and credit, it has been suggested that the injunction is an adjudication of the equitable right of the party seeking it not to be sued in the foreign court, and so is entitled to full faith and credit. (See 33 Yale L. J. 95; cf. Goodrich, Conflict of Laws, 3rd ed., sec. 218.) The Restatement agrees with the view taken by the courts. (Restatement, Conflicts, sec. 450.) In part this view appears to rest upon the ground that to recognize the injunction is to recognize the claim of the enjoining State to exclusive cognizance of a transitory cause of action, which might abridge constitutional privileges. (17 Harv. L. R. 57; 37 Harv. L. R. 157; 72 U. Pa. L. R. 429.) In part it appears to rest upon the ground that to recognize the injunction would "mean in effect that the courts of one State can control what goes on in another." (42 Iowa L. R. 199.) For these reasons I agree with the majority that the Michigan injunction is not entitled to full faith and credit.

But the question in this case goes a step beyond the issue as to full faith and credit. What is here sought is a counter-injunction to restrain the railroad from enforcing the injunction entered by the Michigan court. The difficulties that attend the kind of injunction that the Michigan court entered were stated long ago by Chancellor Walworth: "If this court should sustain an injunction bill to restrain proceedings previously commenced in a sister state, the court of that state might retaliate upon the complainant, who was defendant in the suit there; and, by process of attachment, might compel him to relinquish the suit subsequently commenced here. By this course of proceeding, the courts of different states would indirectly be brought into collision with each other in regard to jurisdiction; and the rights of suitors might be lost sight of in a useless struggle for what might be considered the legitimate powers and rights of courts." (*Mead* v. *Merritt and Peck* (N. Y. Chan. 1831).

2 Paige 402.) What was there said with respect to an initial injunction applies with added force to a counterinjunction. Just as the first injunction sired the second, so the second might sire a third. The ultimate end is not foreseeable.

The place to stop this unseemly kind of judicial disorder is where it begins. The peculiar preference of one State for a particular venue in a single class of cases does not, it seems to me, afford a basis for indirect interference with litigation pending in another jurisdiction. The salutary power of a court of equity to restrain the prosecution of inequitable actions in a foreign court originated and developed upon more substantial considerations. But we are not called upon to review the propriety of the Michigan injunction. Plaintiff did not seek to review it in the Michigan courts. While venue statutes are usually permissive, Michigan's special provision with respect to actions against railroads appears to require that such actions be brought only in a particular county. (*Pere Marquette Railway Co.* v. *Slutz* (Mich.), 256 N. W. 458.) The Michigan court applied its statute to a Michigan administrator. Illinois has no connection whatever with the occurrences out of which the administrator's claim arose. The policy of Illinois with respect to the maintenance of foreign wrongful death actions was expressed in section 2 of the Injuries Act. (Ill. Rev. Stat. 1955, chap. 70, par. 2) which prohibited them. While it is true that this prohibition is no longer effective, the policy that it expressed is also of significance in determining whether or not a counterinjunction should have been issued.

I think that the trial court and the Appellate Court were right, and so I would affirm.

Hersey and Davis, *JJ.*, join in this dissent.

E COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 479

GRAND TRUNK WESTERN RAILROAD COMPANY,
Petitioner,

vs.

LEWIS W. JAMES, Administrator of the Estate of Colin Kahl, Deceased,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

JAMES A. DOOLEY,
111 W. Washington St.,
Chicago, Illinois,
Attorney for Respondent.

The Scheffer Press, Inc.—ANdover 3-6850

INDEX

	PAGE
Alford v. Wabash Railway Co., 229 Mo. App. 102, 61 S.W. 2d 369, 73 S.W. 2d 277	7
Aquelino v. City of Waukegan, 344 Ill. App. 204	6
Atchison T. & S. F. R. Co. v. Sowers, 213 U.S. 55	11
C. M. & St. P. R. Co. v. Schendel, 292 Fed. 326	9
21 C.J.S. 860	7
43 C.J.S. 503	7
Doyle v. Northern Pacific R. Co., 55 F. 2d 708	7
Dugas v. American Surety Co., 300 U.S. 414	8
Essanay Film Co. v. Kane, 208 U.S. 358	8
French v. Hay, 89 U.S. 250	8
First National Bank v. United Air Lines, 342 U.S. 396	11
Frye v. Chicago R. I. & P. R. Co., 157 Minn. 52, 195 N.W. 629	7
Harris v. Pullman, 84 Ill. 20	6
Hughes v. Fetter, 341 U.S. 609	11
Hull v. Burr, 234 U.S. 712	8
Illinois Bell Telephone Co. v. Illinois Commerce Commission, 414 Ill. 275	6
International Printing Pressmen v. Reberson, 350 Ill. App. 156	6
James v. Grand T. W. R. Co., 14 Ill. 2d 356	7

PAGE

Kepner v. Cleveland C. C. & St. L. R. Co., 322 Mo. 299, 15 S.W. 2d 825 .....

Kleinschmidt v. Kleinschmidt, 343 Ill. App. 539 .....

Leet v. Union Pacinc R. Co., 25 Cal. 2d 605, 144 P. 2d 64, 155 P. 2d 42 .....

Looney v. Eastern Texas R. R. Co., 247 U.S. 214 8,

Miles v. Illinois C. R. Co., 315 U.S. 698 1

Opp v. Pryor, 294 Ill. 538 1

Peterson v. Chicago, B. & Q. R. Co., 187 Minn. 235, 244 N.W. 823 .....

Restatement, Conflict of Laws, sec. 450, p. 534 .....

Royal League v. Kavanagh, 233 Ill. 175 .....

State, ex rel. Bossung v. District Court, 140 Minn. 494, 168 N.W. 589 .....

Taylor v. Atchison, Topeka & Santa Fe Ry. Co., 292 Ill. App. 457 6,

Tennessee C. I. & R. Co. v. George, 233 U.S. 354 1

Union Pacific Railway Co. v. Rule, 155 Minn. 302, 193 N.W. 161 .....

Wintersteen v. National C. Co., 361 Ill. 95 1

61 Yale L. J. 1206 1

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 479

GRAND TRUNK WESTERN RAILROAD COMPANY,
Petitioner,

vs.

LEWIS W. JAMES, Administrator of the Estate of Colin Kahl, Deceased,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

JURISDICTION.

Nowhere in its Petition for Certiorari does Petitioner apprise this Court of the fundamental facts which motivated and justified the Illinois Court in issuing the injunction in question.

Lois Kahl, as Administratrix of her deceased husband's estate, filed suit against Petitioner in the Superior Court of Cook County, Illinois. Petitioner was duly served with process in that action, its attorneys entered an appearance on its behalf, and the Illinois court was thus vested with jurisdiction over the parties and the subject matter.

Despite the fact that this cause was already pending in Illinois, Petitioner filed a suit against the Administratrix, and without notice obtained an order enjoining her from prosecuting the prior action pending in Illinois. It undertook to oust the Illinois court of the previously acquired jurisdiction through the injunctive processes of a Michigan court.

This case presents the simple proposition of whether a State court having first obtained jurisdiction over the subject matter and the parties can have that jurisdiction defeated by an injunctive order obtained in a court of some other State.

It is nothing new or novel. It has been universally held by this and other courts that neither the full faith and credit clause nor rules of comity require compulsory recognition of injunctions so as to abate or preclude the disposition of pending cases.

The counter injunction was issued by the Illinois court restraining the Petitioner from enforcing the Michigan injunction and thus divesting the Illinois court of jurisdiction, since Petitioner had persisted in a course of conduct calculated to defeat the Illinois Court of its prior jurisdiction.

Notwithstanding an injunctive order entered by the Supreme Court of Illinois while the appeal was pending, Petitioner arrested plaintiff, its local attorney, who was also county prosecutor, sought to have her abandon the appeal, had her removed as Administratrix, had appointed in her stead an eighty-three year old Bailiff, and engaged on behalf of the Bailiff, as Administrator of the Estate, a lawyer to prosecute the claim in Cass County, Michigan, wherein Petitioner's same local attorney entered his appearance.

The conduct of the Illinois court is in accord with many fundamental principles, and the Petition presents no new constitutional question. Moreover, under the order of the Supreme Court, the only effect is that the Petitioner is required to defend the case in the court where it was originally pending.

QUESTION PRESENTED.

The statement of "Question Presented" in Petitioner's brief (p. 3) does not correctly reflect the issue inyolved. In fairness, it should be stated thus:

> Where a Court has obtained prior jurisdiction of the subject matter and parties, must it, under the full faith and credit and due process clauses of the Federal Constitution, recognize an injunctive order subsequently obtained in another State court so that it will be ousted of jurisdiction of the cause?

STATEMENT.

This proceeding involves no new issue. Specifically, it is a case where an Illinois court obtained jurisdiction of the parties and the subject matter prior to a suit instituted by Petitioner in Michigan. There Petitioner obtained an *ex parte* injunction prohibiting the plaintiff from prosecuting the cause of action then pending in Illinois. To protect its jurisdiction in accord with the inherent power of courts, the Illinois court issued an injunction whereby Petitioner was enjoined from proceeding in other courts.

On February 16, 1956, Lois Kahl, Administratrix of her deceased husband's estate, filed suit against Petitioner in the Superior Court of Cook County, Illinois, under the Michigan wrongful death statute. Service was had upon Petitioner on February 17, 1956.

Petitioner obtained a number of extensions of time to plead, and on March 6, 1956, before answering, it filed suit against Mrs. Kahl in Cass County, Michigan, and obtained a temporary injunction without notice, restraining her from prosecuting her action in the Superior Court of Illinois.

Mrs. Kahl thereupon amended her complaint in the original action in the Superior Court and did not, as the Petitioner would have the Court believe, file a new action. In the amendment she alleged that Petitioner had failed to question her right to proceed in the Superior Court of Illinois by appropriate motion in that Court; that she could not obtain a fair trial in Cass County, Michigan; that the Cass County, Michigan suit was instituted for the purpose of preventing her from obtaining a trial in the Illinois court, of obtaining an unconscionable and inequitable advantage over her, of unduly annoying and harassing her, and of ultimately forcing her into an unjust settlement of her cause of action. It was further alleged that Petitioner would continue to prosecute the Cass County action, and such prosecution would result in irreparable damage to the estate.

She moved for a temporary injunction on the basis of her amended complaint, but was unsuccessful in the trial and appellate courts.

She thereupon filed a Petition for Leave to Appeal to the Supreme Court of Illinois. While the Petition for Leave to Appeal was pending, she was arrested, pursuant to a body attachment obtained on the application of O'Connor, Petitioner's local attorney and also prosecuting attorney for Cass County, Michigan. She was compelled by him, under the threat of imprisonment, to write her Illinois attorney to dismiss the appeal.

Petitioner filed a second suit for an injunction against the Administratrix and obtained an order restraining her from further prosecution of her Illinois appeal.

Notwithstanding that the Illinois Supreme Court entered an order restraining Petitioner from taking any further action in Michigan until it had disposed of the appeal, O'Connor had Mrs. Kahl removed as Administratrix, had Greenawalt, an eighty-three year old Court Bailiff, appointed in her stead and he, although representing the railroad, arranged for a lawyer to represent the estate in the suit against the railroad filed in Michigan, wherein O'Connor promptly entered his appearance as Petitioner's attorney. Greenawalt was removed, and James substituted when the facts were brought to the attention of the Probate Court.

A counter-injunction was thus necessary to preserve the Illinois court's jurisdiction over the controversy.

REASONS FOR DENIAL OF WRIT.

1. There is no Federal question of substance not heretofore decided by this Court. Petitioner in its assertion that the Illinois Supreme Court "has fired the first shot in what promises to be, in the words of the Appellate Court, 'a preposterous duel of injunctions between the courts of Michigan and Illinois,'" has apparently been unconcerned with the fact that it attempted, through a writ of injunction obtained in a subsequent proceeding in a Michigan court, to control litigation already pending in the Illinois court, and that the Illinois court merely restrained the parties before it from interfering with its jurisdiction.

The Illinois court simply held: (1) an injunction obtained in a Michigan court in a suit filed subsequent

to that in Illinois wherein the Illinois court had jurisdiction of the parties and the subject matter could not defeat the Illinois court of its jurisdiction which it would retain until final judgment; and (2) that a court may issue an injunction in order to protect its jurisdiction against proceedings in other courts having as their purpose an attempt to defeat that jurisdiction.

It is the public policy of Illinois courts, recognized by repeated decisions, that the court first properly acquiring jurisdiction of an action should be permitted to continue with its disposition unhindered by subsequent actions of other courts. To this effect, see *Illinois Bell Telephone Co.* v. *Illinois Commerce Commission,* 414 Ill. 275; *Aquelino* v. *City of Waukegan,* 344 Ill. App. 204; *International Printing Pressmen* v. *Rebenson,* 350 Ill. App. 156; *Taylor* v. *Atchison, Topeka & Santa Fe Ry. Co.,* 292 Ill. App. 457; *Harris* v. *Pullman,* 84 Ill. 20; *Royal League* v. *Kavanagh,* 233 Ill. 175.

Indeed, it is consistent with that universally followed policy that a court which acquires jurisdiction will continue with the cause to a final conclusion.

To that effet, see the cases cited under paragraph 3 herein.

If the rule were otherwise, the administration of justice would be thrown into chaos through multiplicity of suits, with each litigant filing new suits in the forum most desirable to him.

2. The injunctive order issued by the Michigan court was not entitled to full faith and credit in Illinois. It is well established that neither the full faith and credit clause nor the rules of comity require a compulsory recognition of an injunction to abate a pending case.

(Restatement, Conflict of Laws, sec. 450, p. 534; 21 C.J.S. 860; 43 C.J.S. 503; *Taylor* v. *Atchison, Topeka and Santa Fe Railway Co.*, 292 Ill. App. 457; *Kleinschmidt* v. *Kleinschmidt*, 343 Ill. App. 539; *Alford* (*Lindsey*) v. *Wabash Railway Co.*, 229 Mo. App. 102, 61 S.W. 2d 369, and 73 S.W. 2d 277; *Union Pacific Railway Co.* v. *Rule*, 155 Minn. 302, 193 N.W. 161; *Kepner* v. *Cleveland, Cincinnati, Chicago and St. Louis Railway Co.*, 322 Mo. 299, 15 S.W. 2d 825, cert. denied 280 U.S. 564; *Frye* v. *Chicago, Rock Island and Pacific Railway Co.*, 157 Minn. 52, 195 N.W. 629, cert. denied 263 U.S. 723; *Leet* v. *Union Pacific Railway Co.*, 25 Cal. 2d 605, 144 P. 2d 64, subsequent opinion 155 P. 2d 42; *State ex rel. Bossung* v. *District Court*, 140 Minn. 494, 168 N.W. 589; *Peterson* v. *Chicago, Burlington and Quincy Railway Co.*, 187 Minn. 235, 244 N.W. 823; *Doyle* v. *Northern Pacific Railroad Co.*, 55 F. 2d 708.)

As the dissenting opinion in the Illinois Supreme Court pointed out:

> "So far as I have been able to ascertain, no court has as yet held that such an injunction is entitled to full faith and credit in the sense that the action toward which the injunction is directed must be abated." (*James* v. *Grand Trunk West. R. R. Co.*, 14 Ill. 2d 356, 373.)

Nor is the privileges and immunities clause of the Constitution in anywise involved. Illinois has accorded a Michigan citizen the same rights as an Illinois citizen.

3. Contrary to Petitioner's argument, it is a uniformly established principle that when a court has acquired jurisdiction, it may retain and protect that jurisdiction by injunctive process, if necessary, against litigants attempting to defeat its jurisdiction by proceedings in other courts.

This court and many others have uniformly sustained the principle that when a court has acquired jurisdiction it may retain and protect that jurisdiction by injunctive process if necessary, against litigants attempting to oust it of jurisdiction by proceedings in other courts. In *French* v. *Hay*, 89 U. S. 250, an injunction was issued in the Circuit Court of the United States to prevent a party from pursuing judicial proceedings in the State courts of Pennsylvania, it appearing that the federal suit was first filed. The court said, pp. 252, 253:

> "The court having jurisdiction *in personam* had power to require the defendant to do or refrain from doing anything beyond the limits of its territorial jurisdiction which it might have required to be done or omitted within the limits of such territory. Having the possession and jurisdiction of the case, that jurisdiction embraced everything in the case, and every question arising which could be determined in it until it reached its termination and the jurisdiction was exhausted. While the jurisdiction lasted, it was exclusive and could not be trenched upon by any other tribunal."

The *French* case was cited in *Dugas* v. *American Surety Co.*, 300 U.S. 414, 428-429, *Essanay Film Co.* v. *Kane*, 258 U.S. 358, 361, and *Hull* v. *Burr*, 234 U.S. 712, 723.

It is true that the issue in the foregoing cases arose where a Federal court enjoined prosecution of an action in a state court. The underlying principle is, however, identical. If a Federal court can so act to preserve and enforce its jurisdiction, no reason appears why the same power should be denied a state court.

In the case of *Looney* v. *Eastern Texas R.R. Co.*, 247 U.S. 214, this court said p. 221:

"The use of the writ of injunction, by federal courts first acquiring jurisdiction over the parties or the subject matter of a suit, for the purpose of protecting and preserving that jurisdiction until the object of the suit is accomplished and complete justice done between the parties, is familiar and long established practice. *Freeman* v. *Howe*, 24 How. 450; *Harkrader* v. *Wadley*, 172 U.S. 148, 163, 164."

In the same case the court went on to observe, p. 221:

"So important is it that unseemly conflict of authority between state and federal courts should be avoided by maintaining the jurisdiction of each free from the encroachments of the other, that Sec. 265 of the Judicial Code, Rev. Stats. sec. 720, effective March 2, 1793, see 22, 1 Stat. 334, has repeatedly been held not applicable to such an injunction. *Julian* v. *Central Trust Co.*, 193 U.S. 93 113; *Simon* v. *Southern Ry. Co.*, 236 U.S. 115."

In *C. M. & St. P. Ry. Co.* v. *Schendel*, 292 Fed. 326 (C.A. 8th) the court was likewise faced with the validity of an order entered by a Federal District Court in Minnesota directing the defendant to dismiss a suit to enjoin the witnesses in an action arising out of the wrongful death of an Iowa resident from testifying outside the State of Iowa. In sustaining the order the Court of Appeals noted that the decision of the Iowa court was based upon an anti-ambulance chasing statute. It held, however, that a Federal court should reject this statute since it conflicted with the public policy declared in the Federal Employers' Liability Act with respect to choice of forum. Similarly, in the instant case, the Michigan venue statute should be rejected since, as has been shown, it conflicts with the public policy of Illinois with respect to actions by non-resident plaintiffs.

disposing of the Iowa statute, the court in the *Kline* case held that the test actually was whether the Illinois court had first acquired jurisdiction and, if so, whether the state court action in Iowa would defeat that jurisdiction. If the latter were true, then the court could assert its process against the defendant railroad to prohibit it from proceeding in the other forum (Iowa in this case) to protect its own jurisdiction.

This is exactly what happened here. Illinois properly acquired jurisdiction over this cause prior to the institution of any action in Michigan. Manifestly, if the petitioner is held in contempt and prohibited from participating in the Illinois litigation, it will greatly hamper, as a matter of fact, prohibit that litigation. It therefore follows that the trial court had the power to award appropriate relief against the defendant in order to protect its jurisdiction.

This principle has been affirmed in various State courts, particularly in *Peterson* v. *Chicago, Burlington and Quincy Railway Co.*, 187 Minn. 235, 244 N.W. 823, in which the Minnesota court in which the previous action was pending ordered the defendant to dismiss its out-of-state injunction proceedings.

The only issue raised by Petitioner's Michigan action was whether Illinois was the lawful forum wherein to maintain the action, but whether the action could be prosecuted outside of Cass County, Michigan, without specific reference to Illinois, the State in which the case was then pending. This determination of the Michigan court was based upon a Michigan venue statute. But certainly a Michigan court could not determine the jurisdiction of an Illinois court. Moreover, to do so would be to give the Michigan venue statute an unconstitutional application in

this attempt to restrain a litigant from pursuing a transitory cause of action in another state.

To this effect see *Atchison, Topeka & Santa Fe Ry Co.* v. *Sowers*, 213 U.S. 55, and *Tennessee C. I. & R. Co.* v. *George*, 233 U.S. 354. In the latter case, this Court said that venue is no part of the right of the transitory cause of action, that a State could not create a transitory cause of action and at the same time destroy the right to sue in any court having jurisdiction, that jurisdiction being determined by the law of the court's creation and not by the extra-territorial operation of a statute of another State even though it created the right of action.

In the light of these decisions, it is obvious that the Michigan statute itself cannot be given an extra-territorial application, and it would seem to follow inevitably that a decree based on such an unconstitutional statute could be given no greater force or effect.

And the Illinois court could not refuse to entertain plaintiff's action on the ground that it was based on the wrongful death Act of a sister State. (*First National Bank of Chicago* v. *United Air Lines, Inc.*, 342 U.S. 396, 96 L. ed. 441; *Hughes* v. *Fetter*, 341 U.S. 609, 95 L. ed. 1212; *Miles* v. *Illinois Central Railroad Co.*, 315 U.S. 698, 703, 86 L. ed. 1129; 61 Yale L. J. 1206.) Moreover, it is the undisputed policy of Illinois to keep its courts open to residents and non-residents alike. (*Wintersteen* v. *National Cooperage and Woodenware Co.*, 361 Ill. 95; *Opp* v. *Pryor*, 294 Ill. 538.)

Nor does an Illinois court by its counter injunction set itself up as a super supreme court. It is merely acting in a realistic manner. Unless it issued a counter injunction, Petitioner could oust it of its jurisdiction through

such conduct as it indulged in while the appeal was pending in the Supreme Court, notwithstanding the order of that court.

CONCLUSION.

It therefore appears that no new or novel question is presented here. The issues are simple and involve questions of settled law. The petition should, therefore, be denied.

Respectfuuly submitted,

JAMES A. DOOLEY
Attorney for Respondent

LE COPY

Off. Supreme Court, U.S.
FILED
DEC 5 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 479

GRAND TRUNK WESTERN RAILROAD COMPANY,
Petitioner,

vs.

LEWIS W. JAMES, ADMINISTRATOR OF THE ESTATE OF COLIN KAHL, DECEASED,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

GEORGE B. CHRISTENSEN,
GERARD E. GRASHORN,
EDWARD J. WENDROW,
38 South Dearborn Street,
Chicago 3, Illinois,
Counsel for Petitioner.

WINSTON, STRAWN, SMITH & PATTERSON,
38 South Dearborn Street,
Chicago 3, Illinois,

FORBES B. HENDERSON,
EARL C. OPPERTHAUSER,
131 West Lafayette Blvd.,
Detroit, Michigan,
Of Counsel.

THE LAWYERS PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 479.

GRAND TRUNK WESTERN RAILROAD COMPANY,
Petitioner,

vs.

LEWIS W. JAMES, ADMINISTRATOR OF THE ESTATE OF COLIN KAHL, DECEASED,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

MAY IT PLEASE THE COURT:

The brief in opposition is riddled with misstatements of fact (without record references) having nothing to do with the fundamental constitutional questions confronting the Court. They are made for the sole purpose of prejudicing petitioner in the eyes of the Court in its consideration of these questions. We refuse to get into an extended discussion of fact details that will serve merely to obscure the basic questions but fairness to our client precludes us from permitting a few of the most egregious ones going unanswered.

Page 5 of the brief states that notwithstanding an Injunction order by the Illinois court a Mr. O'Connor "had Mrs. Kahl removed as Administratrix, had Greenawalt,

an eighty-three-year-old Court Bailiff, appointed in her stead and he, although representing the railroad, arranged for a lawyer to represent the estate in the suit against the railroad filed in Michigan, wherein O'Connor promptly entered his appearance as Petitioner's attorney."

The certiorari record will show that Mrs. Kahl was not removed by Mr. O'Connor or by petitioner, but by the Probate Court of Cass County because she had failed to account as required by law—not because of her defiance of the Michigan injunctions. (R. 169.) It will further show that the Probate Court of Cass County, not Mr. O'Connor or petitioner, appointed Mr. Greenawalt as successor administrator. The Probate Court was undoubtedly aware of Mrs. Kahl's defiance of Circuit Court orders and presumably selected the bailiff of the Circuit Court of Cass County, Michigan, as successor, because he would comply with the orders of Court of which he was an officer. The statement that Mr. O'Connor arranged for the lawyer to represent the estate in the suit against the railroad is false as the record references in the footnote on page 7 of the original petition show. The brief is replete with other misstatements of a similar nature, but, as we have said, we refuse to be sidetracked by them from the main issues.

Whatever may be the subsidiary facts the central one remains, namely, that the Illinois Court has asserted supremacy in the exercise of its injunctive powers over the courts of Michigan. It seeks to deny to the Courts of Michigan the power to control their own citizens in prosecuting oppressive litigation in a foreign jurisdiction. It denies full faith and credit to the Michigan injunctions while at the same time maintaining that any acts done in Michigan in violation of its counterinjunction would give it the right to punish for a violation thereof on the theory that its counterinjunction is valid and binding in

Michigan. In short, contrary to the full faith and credit clause, it claims the right to nullify decrees of a sister state, valid and binding where entered, on the grounds that such decrees are interfering with its jurisdiction. It pays no heed to the fact that an injunction decree operates *in personam*, and, by ignoring that fact, necessarily claims the right to interfere with the jurisdiction of the Court which entered the injunction.

The brief cites a number of alleged reasons for denying the writ, but they only emphasize the necessity for granting it. Nowhere does it suggest how this judicial impasse between Michigan and Illinois is to be resolved unless this Court intervenes. In effect what counsel claim is that the Michigan Court should bow to the Illinois counterinjunction. But the Illinois court has no power of review over the decrees of courts of sister states and Michigan has as much right to have its court orders enforced as Illinois has. Obedience to court orders means orders of courts of all states, not merely of one particular state.

The brief states that the actual question presented is whether Illinois must "recognize an injunctive order subsequently obtained in another State court so that it will be ousted of jurisdiction of the cause?" (p. 3.) The actual question goes much beyond this. Illinois has not refused to "recognize" the Michigan injunctions—it has "recognized" them as valid and binding in Michigan and holds, therefore, that they should be nullified so that the enjoined Michigan citizen can proceed with impunity in Illinois.

In our original petition we pointed out that this Court has never decided whether a decree enjoining a citizen from maintaining an action in a foreign state is entitled to full faith and credit in the latter state in the sense

that it must abate the action when the injunction had been shown, and, that if the decree had to be so recognized, a counterinjunction was necessarily invalid. (pp. 8, 9.) The brief asserts it has been held by "this court" that a Court of a foreign state need not abate an action once a foreign injunction has been shown. (p. 2.) This is not true. This question remains undetermined by this Court to this day. No effort is made in the petition to show why the Michigan injunctions are not entitled to full faith and credit under the plain words of the Constitution.

It is further said that "This proceeding involves no new issue." (Br. 3.) However, so far as we are advised no court of any state of the United States, prior to the present decision, has ever asserted the right to issue a counterinjunction, enjoining enforcement of an injunction against prosecution of a state created cause of action in another state. If an unprecedented decision on a federal constitutional point involves no new issue then there is no such thing.

Cole v. *Cunningham*, 133 U. S. 107, cited in our original petition (p. 9) and ignored in counsel's brief, in itself conclusively demonstrates that the Illinois decision violates the federal constitution. That case held an injunction against the maintenance of an injunction in another state did not interfere with the courts of a sister state, and did not contravene the full faith and credit and privileges and immunities clause. The entire basis for the claim of right to enter a counterinjunction, namely, "protection of prior jurisdiction" is destroyed by this decision.

Although both the petition and this reply have touched on the merits of the decision of the Illinois Supreme Court we understand that the primary function of a petition is not to show error but to demonstrate that the case presents federal questions worthy of review. It is dif-

ficult to conceive of a case that more aptly meets this test than this one. Involved is the question whether an injunction enjoining an action in a foreign state must be recognized by the latter state. This question has never been decided by this Court. The fundamental question, namely, whether a court of one state may, by counterinjunction, enjoin enforcement of injunctions entered by the court of another state when they are valid and binding upon the parties where entered, likewise has never been determined. This latter question is not a mere abstract point of law under the full faith and credit clause. It involves fundamental claims of power between courts of sister states. It can be resolved in an orderly fashion only by a Court possessing power superior to both state Courts in its interpretations of the Federal Constitution. This Court should grant certiorari in order to resolve these novel constitutional questions and to prevent the multiplicity of contempt actions that have already begun.

Respectfully submitted,

GEORGE B. CHRISTENSEN,
GERARD E. GRASHORN,
EDWARD J. WENDROW,
38 South Dearborn Street,
Chicago 3, Illinois,
Counsel for Petitioner.

WINSTON, STRAWN, SMITH & PATTERSON,
38 South Dearborn Street,
Chicago 3, Illinois,

FORBES B. HENDERSON,
EARL C. OPPERTHAUSER,
131 West Lafayette Blvd.,
Detroit, Michigan,
Of Counsel.